IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 20 OF 2003.

1. Special Land Acquisition Officer
(North Goa, Konkan Railway
Corporation Limited, Amey Guest House,
Davorlim Road, P.O. Navelim,
Salcete, Goa 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawnfnd, Near Margao Railway Station,
Margao, Goa. ... Appellants.

Versus

Mariano Caetano Clarimundo
Francisco Jose de Piedade Menezes
alias Caetano de Piedade Menezes,
by his constituted attorney
Loyola menezes,
T-6, John Paul Building,
Panaji, Goa. ... Respondent.

Shri E. Afonso, Advocate for the Appellants.

Shri A.F. Diniz, Advocate for the Respondent.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE OF RESERVING THE JUDGMENT: 20.09.2004
DATE OF PRONOUNCING THE JUDGMENT: 28.09.2004

J U D G M E N T : (PER BRITTO, J.)

This appeal is directed against the Judgment/Award dated 6.9.2002 of the learned Addl. District Judge (II) , Panaji by which the learned Addl. District Judge has enhanced the compensation payable

to the respondent (Applicant, for short) from Rs.12/- per sq.m. to Rs.100/- per sq.m.

2. Some facts are required to be stated to dispose of this appeal.

3. By virtue of Notification issued under S.4(1) of the Land Acquisition Act, 1894 published on Gazette dated 30.12.1991, the Government acquired about 158781 sq.m. of land for the purpose of construction of a New B.G. Line between Roha and Mangalore in village Malar of Tiswadi taluka. In the said acquisition an area of 8875 sq.m. from survey No.194 of Malar village belonging to the applicant was also acquired.

4. By Award dated 7.3.1994, the Land Acquisition Officer awarded to the applicant compensation at the rate of Rs.12/- per sq.m. and dissatisfied with the same, the applicant sought a reference to be made under S.18 of the Land Acquisition Act, 1894 and claimed enhancement at the rate of Rs.200/- per sq.m. In the said reference the applicant examined his Attorney and produced a Sale Deed dated 5.11.85 and in support of the same examined AW.3 Dr. Edgar Silveira. The applicant also examined a surveyor who produced a copy of the plan of Malar village.

5. The learned Addl. District Judge noted that the said plot of the sale deed was situated at a distance of about 1.2 kms. from the

acquired land and also found that the acquired land as well as the land of the said sale deed were both barad type of lands and were in fact touching the main road going from Malar to Narla. The learned Addl. District Judge accepted the said sale deed dated 5.11.1985 as a basis for enhancing the compensation. The learned Addl. District Judge considering that the sale deed was six years prior to the notification, awarded to the applicant increase at the rate of 10% per year and also noted that the acquired land was comparatively larger than the plot of the sale deed and therefore fixed the compensation at the rate of Rs.100/- per sq.m.

6. The appellant has filed an application dated 7.9.2004 seeking leave of this Court to produce certain sale deeds which were made use of by the Land Acquisition Officer on the ground that the said sale deeds could not be produced on record as the certified copies of the same were not available with the Sub-Registrar, given the fact that the Mamlatdar had furnished the statistics with date of its registration in the Sub-Registrar's office as dates of execution of sale deeds and that thereafter through a search at the office of the Talathi at Malar, the appellant found the copies on 30.6.2004 and after finding the correct date of the execution of the sale deeds and its registration numbers, the appellant could get the certified copies on 5.7.2004 from the office of the Sub-Registrar at Panaji.

7. The appellant has contended that the said sale deeds are very

material to decide the controversy in the matter of fixation of the market rate of the acquired land and are required to be brought on record to be read in evidence. The first sale deed dated 28.11.95 pertains to survey No.193/30 and the second dated 12.11.86 pertains to survey No.114/10 and Survey No.119/10. The first is of a land situated at a distance of about 800 m. from the acquired land. By the first sale deed what was sold was 395 sq.m. at the rate of 13.79 per sq.m.

8. From the records and proceedings of the learned Addl. District Judge it can be seen that the case was fixed for the appellants' evidence on 14.1.2000, 25.2.2000, 6.4.2000, 4.5.2000, 5.6.2000 and 16.6.2000 during which time the appellants examined two witnesses. The appellant at that time did not show any inclination that they wanted to rely upon the sale deeds now sought to be produced before this Court. Order 41, Rule 27 of C.P.C. Provides for production of additional evidence before the appellate Court in certain contingencies. It is not the case of the appellants that they could not have produced the evidence of the said sale deeds before the Trial Court and being so, in our view, the case of the appellants is not covered by any of the contingencies stipulated under sub-rule (1) of Rule 27 of Order 41 C.P.C., and, therefore the application for production of additional evidence deserves to be rejected.

9. Our attention has been drawn to a judgment of this Court dated

24.8.2004 in F.A.No.21/2001, to which one of us was a party (Britto, J.). The said appeal was filed against the judgment/award of the learned Addl. District Judge-II, Panaji dated 21.9.2000 in LAC No.208/1996. The said award was upheld by this Court by which compensation was ordered to be paid at the rate of Rs.81/- per sq.m. The said award of the learned Addl. District Judge was also based on the same sale deed dated 5.11.1985 and not only that, it pertained to a similar land of an area also more or less the same, in the same village and also pertained to the same notification. On this aspect, we may refer to the case of **M/s. Printers House Pvt. Ltd. v. Mst. Saiyadan (A.I.R. 1994 S.C. 1160)** wherein the Hon'ble Supreme Court stated that :-

> " If 'Comparable Sales Method of Valuation of land' is adopted for determining the market value of an acquired plot of land, it generally holds good for determination of the market value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary Notification. "

10. Again the Supreme Court in the case of **Union of India v. Shri Dhyan Singh and others (2000 A.I.R. SCW 4936)** had this to say:-

> " In view of the decision of this Court in Civil Appeal No. 4405 of 1997 in which the land value has been fixed at Rs.16,750/- per bigha for lands

> covered by the same Notification there is no reason not to adopt the same value as for the land involved in this appeal also. "

11. In the case of **Bhim Singh v. State of Haryana (A.I.R. 2003 S.C. 4382)** the Supreme Court again observed as follows :-

> " Even otherwise when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding this Court has already approved the rate fixed then in our view the best method would be to look at the earlier Judgments and Awards. Therefore , the High Court cannot be faulted for having fixed compensation on the basis of earlier Judgments. "

12. Shri Afonso, the learned counsel of the appellants, submits that in the case at hand, the land could not have been put to any development because it was a protected land under Th Goa Ancient Monuments an Archaeological Sites and Remains Act, 1978 and the Rules made thereunder. We are not inclined to accept the said contention. The learned Addl. District Judge has rightly concluded that the appellants had not produced any notification in that regard to prove that since the year 1983 the land under survey No.194 was declared as a prohibited area. The learned Addl. District Judge has also observed that the appellants along with written arguments had produced a notification dated 4.3.1983 which did not include survey

No.194 of Malar village. The learned Addl. District Judge rejected the contention and,in our view, rightly that the acquired land had any restrictions for development, the same being located in a protected area.

13. The learned Addl. District Judge has also awarded compensation to the applicant for severance at the rate of Rs.100/- per sq.m. There can be no dispute that in the reference application, the applicant did state that the L.A.O. had not awarded compensation for severance of 375 sq.m. of the land of the applicant. However, the said statement had remained without being supported by the applicant's attorney in his evidence before the Court. All that AW.1 Loyola Menezes had stated was that a strip of 1.5 metres in breadth of the entire property was rendered unfit for any purpose. AW.1 Menezes did not mention the area of the same. The applicant did examine a surveyor who had produced a plan of the property. The said plan on the very face of it does not support the statement of the applicant in the reference application or for that matter the statement of the applicant before the Court that either an area of 375 sq.m. was rendered useless or a strip of 1.5 metres had become unfit for any purpose. It was the duty of the applicant to have produced cogent and acceptable evidence that any remaining portion of the applicant's land was rendered useless on account of this acquisition and in the absence of such evidence, in our view the learned Addl. District Judge was certainly not justified in awarding compensation on account of severance and that too at the

same rate as the acquired land. These findings on issue No.2 by the earned Addl. District Judge therefore deserve to be set aside.

14. As stated hereinabove, since the acquired land in this case pertain to the same notification and was comparable in nature to the land acquired in LAC No.208/96, we deem it appropriate that the compensation to be paid to the applicant should be at the rate of Rs.81/- per sq.m. Consequently, we allow the appeal partly. The Judgment and Award of the learned Addl. District Judge dated 6.9.2002 is hereby modified, in that the applicant will now be paid compensation at the rate of Rs.81/- per sq.m. with all consequential statutory benefits. We leave the parties to bear their own costs.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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